

## 2007 DRAFTING REQUEST

### Bill

Received: **12/15/2006**

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Jeff Fitzgerald (608) 266-2401**

By/Representing: **Jim Bender**

This file may be shown to any legislator: **NO**

Drafter: **mshovers**

May Contact:

Addl. Drafters:

Subject: **Local Gov't - munis generally**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Fitzgerald@legis.wisconsin.gov**

Carbon copy (CC:) to:

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### Pre Topic:

No specific pre topic given

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### Topic:

Limit the scope of direct legislation

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### Instructions:

See Attached. Limit the scope of direct legislation to "issues that have to do with a municipality" (see letter from Watertown city attorney). Need to tighten the statute to provide more guidance after SC's "Mount Horeb" decision -- 263 Wis. 2d 544 (2003)

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	mshovers 01/03/2007	jdye 01/04/2007	sherritz 01/04/2007	_____	sbasford 01/04/2007	mbarman 01/05/2007	

FE Sent For:

**NO**

<END>

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1/2	mshovers	1/4 jld	sh 1/4	sh/yn 1/4			
1/1 MES 1/3/07							

FE Sent For:

<END>

OFFICE OF  
**CITY ATTORNEY**  
WATERTOWN, WISCONSIN

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City Attorney

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117 N. Second Street  
P. O. Box 16  
WATERTOWN, WI 53094

February 23, 2006

Representative Jeff Fitzgerald  
P. O. Box 8952  
Madison, WI 53708-8952

Re: City of Watertown v. Penny Eiler  
Case No. 06 CV 44

Dear Mr. Fitzgerald:

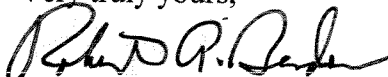
I enclose for your review a Transcript of the Court's decision in the above entitled matter which was heard by Judge Snyder upon a Mandamus Petition in the Circuit Court for Jefferson County. As you know, similar Petitions were filed throughout the State of Wisconsin with varying results.

It is my personal opinion that Section 9.20 of the Wisconsin Statutes (direct legislation) was never intended to be utilized for this type of referendum. Unfortunately, the trial courts in Wisconsin are having a great deal of difficulty applying the standards set forth in the Mount Horeb decision and we would request that the Legislature consider amending the Statutes so that the criteria would be clarified.

This week Judge John Ullsvik rendered a decision in a City of Jefferson direct legislation case that reached the opposite result from the Watertown case and in his decision Judge Ullsvik also expressed concern regarding the application of the Mount Horeb criteria.

I have been keeping my son informed as to the status of these various decisions and he indicated that you may be interested in sponsoring legislation which would hopefully resolve this dilemma. If you would like to discuss this matter in greater detail, please feel free to contact me at your earliest convenience.

Very truly yours,



Robert A. Bender  
City Attorney

RAB:ss

Cc: Mayor John David

current law the legal issue must be answered “no matter how far-fetched or removed from the immediate affairs of the City” (p. 16, 16).

The court closes with a nod to the legislature, suggesting legislation that is either “restricting, controlling, broadening or limiting” section 9.20. He states that the more that cases occur like the one at hand, the further the court will be forced to define the areas that are available for direct legislation.

The decision of the court states, “As I see the state of the law at this moment this is a proper legislative act for direct legislation” (p. 17, 14).

It is our goal to clarify the criteria for what can fall under Section 9.20. The statute must be narrowed so that only issues that have to do with a municipality can be placed on the ballot through Section 9.20 for direct legislation. To quote the court decision in *City of Watertown v. Penny Eiler*, placing issues that have nothing to do with a municipality is an “exercise in futility”. To save the city time and money it is constructive to narrow Section 9.20.

This case was brought to court because a resolution was brought to the Watertown Common Council. The initiative reads, "Be it resolved, the city of Watertown urges the United States to begin an immediate withdrawal of its troops from Iraq, starting with the National Guard and Reserves."

The Watertown Common Council did not adopt the proposal, nor did they refer it to a vote of the electors, which is the procedure established under section 9.20 for direct legislation (p. 3, 10).

Plaintiffs filed an action seeking a writ of mandamus against the Common Council to force the council to take action (p.3, 14). The plaintiffs argue that the City Clerk certified the petition was sufficient in its signatures and proper in its wording (p. 3, 4-8). Additionally, the plaintiffs argue that the only adequate remedy for the timely nature of this resolution is a writ of mandamus. To summarize the plaintiffs stated, "Resolutions adopted in the past by the Council don't differ in any significant way from the resolution at issue in this case. And the Common Council should not be allowed to change its course and refuse to act on the proposal at issue here" (p. 4, 10).

The defendant, the City Council of the City of Watertown, argues that this resolution is not legislative and it must be legislative to pass under section 9.20 for direct legislation (p.6, 18). It is not legislative because there is no law to comply with, violate, interpret, etc. Since there is no law being proposed, it's not legislation (p.6, 7). The defense also reiterates that it is neither administrative nor ceremonial which do not fall under section 9.20 anyway. Also, due to the timely nature of the resolution, the defense argues that it is temporary, which would therefore place it in the administrative rather than legislative category (p.9, 15). Additionally, because this resolution speaks specifically to the Iraq war, it is considered "specific" in nature, again placing it into the administrative category (p. 9, 19).

The plaintiff rebuttals by arguing that the issue is legislative in nature because it's within the power of the Council, demonstrated by the fact that previous resolution of this nature have passed under section 9.20 (p. 11, 7). Also, the plaintiff argues, the distinction of "temporary" is a tool, not a definitive administrative classification (p. 11, 12)

Finally, the defense rests by restating that it is not legislative in nature and therefore not under section 9.20 by stating, "Is this a resolution opposing a new law? It's not. That's the problem."

The court speaks first to the plaintiff's argument that resolutions of this nature have passed before, therefore, it should pass. The court states, "The fact that resolutions may have been passed by a governing body in the past does not make this one legal in the present. There may have been mistakes in the past... Past actions do not make present actions legal" (p. 12, 11)

The court then states that, although it is not pertinent to the City of Watertown or the City council to weight in and vote on matters of national foreign policy, according to the

## Shovers, Marc

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**From:** Duerst, Christina  
**Sent:** Friday, January 05, 2007 3:39 PM  
**To:** Shovers, Marc  
**Subject:** FW: Message for Marc Shovers

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**From:** Bender, Jim  
**Sent:** Friday, January 05, 2007 3:38 PM  
**To:** LRB.Legal  
**Subject:** Message for Marc Shovers

Kleefisch will be the lead on LRB 1291/1, but we would still like to retain drafting rights with you as well.

Thank you -

**James E. Bender**  
Communications Director  
Office of Rep. Jeff Fitzgerald  
Majority Leader  
(608) 266-2540



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-1291/7

MES

jd  
KMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SOON

gls

1

AN ACT ... relating to: limiting the scope of direct legislation. ✓

*Analysis by the Legislative Reference Bureau*

Under current law, a number of electors equal to at least 15 percent of the votes cast for governor at the last general election in their city or village may sign and file a petition with the city or village clerk requesting that a proposed ordinance or resolution, without alteration, either be adopted by the common council or village board (governing body), or referred to a vote of the electors. A number of Wisconsin Supreme Court decisions, however, have held that there are four exceptions to the general requirement that a proposed ordinance or resolution be adopted by the governing body or submitted to the voters. See, for example, *Mount Horeb Community Alert v. Village Board of Mt. Horeb* 263 Wis. 2d 544, 556 (2003). The exceptions are the following:

\*

1. A matter which is executive or administrative in nature, rather than legislative. *that*
2. A proposal that compels the repeal of an existing ordinance or compels the passage of an ordinance in clear conflict with an existing ordinance.
3. A proposal that seeks to exercise legislative powers not conferred on the city or village.
4. A proposal that would conflict with state law.

Following submittal of the petition and proposed ordinance or resolution to the clerk, he or she must determine, and issue certified findings, as to whether the petition is sufficient and the proposed ordinance or resolution is in proper form. The petition may be amended if it is insufficient or if the amendment is not in proper form.

If the petition and ordinance or resolution meet the statutory requirements the governing body must, without alteration, either pass the ordinance or resolution



within 30<sup>✓</sup> days following the date of the clerk's final certificate, or submit it to the electors, in general, at the next spring or general election. The governing body may, by a three-quarters vote, also order a special election to vote on the ordinance or resolution.

\* If a majority of the votes are in favor of adoption, the proposed ordinance or resolution takes effect upon publication, which must be within 10<sup>ten</sup> days after the election. Currently, no ordinances or resolutions adopted either by a governing body vote, or by vote of the electors, may be repealed or amended within two<sup>✓</sup> years of adoption except by a vote of the electors, and the governing body may submit a proposition to repeal or amend the ordinance or resolution at any election. Direct legislation that results in a city ordinance or resolution, currently, is not to subject to a mayoral veto.

This bill creates additional exceptions to the general requirement that a proposed ordinance or resolution be adopted by the governing body or submitted to the voters. Under the bill, the governing body of a city or village is not required to act on a proposed ordinance or resolution if the proposal does not substantially relate to a local governmental function or responsibility, or if the proposal is primarily ceremonial or aspirational.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1        **SECTION 1.** 9.20 (4)<sup>✓</sup> of the statutes is amended to read:

2        9.20 (4) The Except as provided in sub. (9)<sup>✓</sup>, the common council or village board  
3 shall, without alteration, either pass the ordinance or resolution within 30 days  
4 following the date of the clerk's final certificate, or submit it to the electors at the next  
5 spring or general election, if the election is more than 6 weeks after the date of the  
6 council's or board's action on the petition or the expiration of the 30-day period,  
7 whichever first occurs. If there are 6 weeks or less before the election, the ordinance  
8 or resolution shall be voted on at the next election thereafter. The council or board  
9 by a three-fourths vote of the members-elect may order a special election for the  
10 purpose of voting on the ordinance or resolution at any time prior to the next election,  
11 but not more than one special election for direct legislation may be ordered in any  
12 6-month period.

9.20 (9) A common council or village board is not required to act under sub. (4)

~~e~~ applies

(a) The proposed ordinance or resolution does not substantially relate to any or village governmental function or responsibility. ✓

(b) The proposed ordinance or resolution is primarily ceremonial or rational. ✓

### SECTION 3. Initial applicability.

(1) This act first applies to a petition that is filed on the effective date of this section. ✓

**(END)**

**Barman, Mike**

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**From:** Bender, Jim  
**Sent:** Friday, January 05, 2007 11:38 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 07-1291/1 Topic: Limit the scope of direct legislation

Please Jacket LRB 07-1291/1 for the ASSEMBLY.